Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)
	) CC Docket No. 94-129
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)

REPLY COMMENTS OF CABLE AND WIRELESS USA, INC.

Pursuant to the Federal Communications Commission's ("Commission") Public Notice[1] and Section 1.429(f) of the Commission's rules,[2] Cable & Wireless USA, Inc. ("C&W USA") hereby files these Reply Comments to the Petitions for Clarification and/or Reconsideration filed in the Commission's Second Report and Order and Further Notice of Proposed Rulemaking ("Second R&O and Further Notice") in this docket prescribing rules to control and provide remedies for "slamming," the unauthorized changes in an end user's selections of a telephone exchange or telephone toll services provider.[3]

[1] Federal Communications Commission, Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, Report No. 2332, 64 Fed. Reg. 30520 (June 8, 1999).
[2] 47 CFR §1.429(f).
[3] Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334, released December 23, 1998 ("Second R&O and Further Notice"). A summary of the Second R&O and Further Notice was published in the Federal Register on February 16, 1999. See 64 Fed. Reg. 7746, as modified 64 Fed. Reg. 9219 (February 16, 1999).

In these Reply Comments, C&W USA urges the Commission to reconsider its 30-day absolution and carrier-to-carrier compensation schemes as provided for in the Second R&O and Further Notice. A clear majority of those parties petitioning the Commission and those submitting comments to these petitions, support reconsideration and revision, or elimination, of these liability rules. On the other hand, C&W USA requests the Commission not reconsider its well justified policy prohibiting executing carriers from re-verifying preferred carrier ("PC") change requests from submitting carriers.

I. THE MAJORITY OF THE PETITIONERS AND COMMENTERS SUPPORT RECONSIDERATION OF THE 30-DAY ABSOLUTION RULE.

The majority of the parties submitting comments to the petitions for reconsideration filed in this docket support the Commission reconsidering and revising, or eliminating, the 30-day absolution rule in the Second R&O and Further Notice.[4] Commenters support reconsideration of this rule primarily for two reasons: it is inconsistent with the statutory compensation mechanism mandated by Congress in §258 of the Communications Act, and it is poor public policy.

The Commission's decision to absolve certain individuals of any financial liability for placed toll calls is contrary to Congressional intent and was imposed in an arbitrary and capricious fashion.[5] The majority of the petitions and comments question the Commission's statutory support for imposing the absolution rule. The Commission's reliance on the savings clause in Section 258(b), Section 4(i), or Section 201(b) is not justifiable grounds for imposing a rule that is not "in addition to" the congressionally

[4] Qwest at 3-5; Sprint at 6; US West at 1-5; AT&T at 3-5; MCI at 9-10.
[5] US West at 1.

mandated remedy imposed in 258(b), but is a replacement of this remedy.[6] The Commission should reconsider this rule, recognize that absolution directly undermines the ability of the unauthorized carrier to forward all funds collected to the authorized carrier, and focus on how to best implement the carrier compensation mandate as dictated in Section 258.

Regardless of the statutory justification of this rule, absolution is poor public policy since it can be triggered merely on an accusation of slamming and will result in widespread fraud throughout the telecommunications industry. The Commission specifically rejected absolution in the 1995 Order,[7] but it did not state on the record why its decision on absolution was justifiably reversed three years later. In its comments, US West notes methods to defraud carriers through this absolution policy will quickly work its way through the Internet,[8] resulting in increased slamming complaints. Naturally, additional absolution time periods, as requested in the petitions for reconsideration filed by the New York State Consumer Protection Board, the National Association of State Utility Consumer Advocates, and the National Telephone Cooperative Association, would only compound this problem.[9]

II. THE COMMISSION SHOULD RECONSIDER THE CARRIER-TO-CARRIER COMPENSATION RULES.

As C&W USA stated in its comments to the petitions for reconsideration, the carrier-to-carrier adjudication and compensation scheme created in the Second R&O and

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[6] AT&T at 4.
[7] Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995).
[8] US West at 3.
[9] Qwest at 6.

Further Notice includes perverse incentives that would increase the number of slamming complaints and would be an administrative nightmare to implement.[10] The majority of commenters agree with this position and request the Commission act on those petitions requesting reconsideration of the carrier-to-carrier adjudication and compensation rules.

The most troublesome issue with the carrier-to-carrier scheme created by the Second R&O and Further Notice is the burden placed on those carriers that do not engage in slamming. These carriers, which are charged with investigatory, adjudicatory, and billing agent responsibilities, should not be inequitably burdened by the Commission's rules. These carriers should not incur any additional costs or duties under the Commission's rules since they are complying with the Commission's rules and are not switching the preferred carriers of consumers without authorization.

Unlike the 30-day absolution rule, carriers must exchange funds pursuant to Section 258. In order to better enforce this statute, the Commission should consider revising the carrier-to-carrier rules so the alleged unauthorized carrier re-bills the consumer[11] and all disputes are resolved through the proposed third party administrator.[12] The alleged, and now exonerated, unauthorized carrier is in a better position to re-bill and collect, rather than exchange proprietary information with a competitor, forcing one competing carrier to act as a billing agent for another. Further, the proposed third party administrator can execute the duties imposed under Section 258 in a more fair and equitable manner, with an uninterested party investigating and making a determination on the slamming allegation.

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[10] C&W USA at 9.
[11] Qwest at 11.
[12] MCI at 3.

III. THE COMMISSION CORRECTLY DETERMINED THAT EXECUTING CARRIERS SHOULD NOT RE-VERIFY CARRIER CHANGE SUBMISSIONS.

In the Second R&O and Further Notice, the Commission correctly concluded that executing carriers, most often incumbent local exchange carriers, should not be permitted to re-verify carrier change requests from submitting carriers. Most carriers submitting comments to the petitions for reconsideration agree with the Commission and request those petitions requesting a change to this determination be rejected for customer proprietary network information ("CPNI") and competitive reasons.

First, an executing carrier that uses a carrier change request to re-verify the authorization violates Section 222 of the Act. A carrier that receives CPNI from another carrier for an intended purpose can use that information solely for the intended purpose and for no other reason. Consumers provide the information in a carrier change authorization for one purpose, to have their presubscribed carrier selection changed, and they do not expect this information to be used for any other purpose, particularly marketing opportunities disguised as "re-verification." US West's proposal to regulate the "form, content and scope" of the re-verification contact[13] makes the assumption that the consumer's privacy will not be violated by having an unaffiliated carrier contact them concerning a verified contract formed with another carrier. This assumption is incorrect, and any use of the CPNI outside the permissible scope would be a violation and an opportunity for widespread abuse.

Second, carrier change request information can easily be abused and employed for anticompetitive purposes. The petitioners fail to rebut the Second R&O and Further Notice's well justified concern that incumbent LECs may use the change information to

either market their own products or to delay the choice of competing carriers.[14] All executing carriers that offer a competing service, regardless of size, have the same incentives to misuse the carrier change information. In their petitions, the Rural LECs and NTCA cite customer relations and cost as the overwhelming reason for conducting re-verification. However, these same parties now request the Commission to amend its rules so additional time and monetary expense can be incurred in the name of customer relations? These parties are simply requesting reconsideration on this issue because they see it as a means to leverage their market power, and they are using customer relations and reputational interests in an attempt to disguise their true motives.

IV. CONCLUSION

C&W USA hereby submits these Reply Comments to the Petitions for Reconsideration filed in the Commission's Second R&O and Further Notice. C&W USA supports those petitioners requesting reconsideration of the Commission's 30-day absolution rule as well as the carrier-to-carrier compensation mechanisms as structured in the Second R&O and Further Notice. On the other hand, C&W USA opposes those petitions requesting reconsideration of the Commission's prohibition on re-verification by executing carriers.

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[13] US West at 12.
[14] AT&T at 11.

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